

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
DPH HOLDINGS CORP., <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Reorganized Debtors.	:	(Jointly Administered)
	:	
-----	X	

AFFIDAVIT OF SERVICE

I, Darlene Calderon, being duly sworn according to law, depose and say that I am employed by Kurtzman Carson Consultants LLC, the Court appointed claims and noticing agent for the Reorganized Debtors in the above-captioned cases.

On February 10, 2011, I caused to be served the documents listed below (i) upon the parties listed on Exhibit A hereto via overnight mail, (ii) upon the parties listed on Exhibit B hereto via electronic notification, and (iii) upon the party listed on Exhibit C hereto via postage pre-paid U.S. mail:

- 1) Reorganized Debtors' Objection to Motion of Ohio Bureau of Workers' Compensation to (I) Deem Claim Timely Filed or, Alternatively, (II) Authorize the Amendment of Claim, or (III) Permit Late Filed Claim ("Objection to Ohio Bureau of Workers' Compensation's Motion to File Late Claim") (Docket No. 21116) [a copy of which is attached hereto as Exhibit D]
- 2) Notice of Adjournment of Claims Objection Hearing with Respect to Debtors' Objection to Proof of Claim Number 1301 Filed By Ohio Bureau of Workers' Compensation ("Notice of Adjournment of Claims Objection Hearing as to Proof of Claim Number 1301") (Docket No. 21117) [a copy of which is attached hereto as Exhibit E]

Dated: February 14, 2011

/s/ Darlene Calderon

Darlene Calderon

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 14th day of February, 2011, by
Darlene Calderon, proved to me on the basis of satisfactory evidence to be the person who
appeared before me.

Signature: /s/ Vanessa R. Quiñones

Commission Expires: 3/20/11

EXHIBIT A

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DPH Holdings Corp.
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EXHIBIT B

Post-Emergence Master Service List

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EXHIBIT C

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EXHIBIT D

Hearing Date And Time: February 18, 2011 at 10:00 a.m. (prevailing Eastern time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
DPH HOLDINGS CORP., <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
	:	(Jointly Administered)
Reorganized Debtors.	:	
	:	
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**REORGANIZED DEBTORS' OBJECTION TO MOTION OF OHIO
BUREAU OF WORKERS' COMPENSATION TO (I) DEEM CLAIM
TIMELY FILED OR, ALTERNATIVELY, (II) AUTHORIZE THE
AMENDMENT OF CLAIM, OR (III) PERMIT LATE FILED CLAIM**

**("OBJECTION TO OHIO BUREAU OF WORKERS'
COMPENSATION'S MOTION TO FILE LATE CLAIM")**

DPH Holdings Corp. ("DPH Holdings") and its affiliated reorganized debtors in the above-captioned cases (together with DPH Holdings, the "Reorganized Debtors"), successors of Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates, former debtors and debtors-in-possession (collectively, the "Debtors"), hereby object to the Motion Of Ohio Bureau Of Workers' Compensation To (I) Deem Claim Timely Filed Or, Alternatively, (II) Authorize The Amendment Of Claim, Or (III) Permit Late Filed Claims (Docket No. 21083) (the "Motion"), dated January 24, 2011, filed by the Ohio Bureau of Workers' Compensation (the "Bureau"), and respectfully represent as follows:

Preliminary Statement

1. On or before June 20, 2009, the Debtors caused the Notice Of Bar Date For Filing Proofs Of Administrative Expense (the "June 2009 Notice") to be served on the Bureau. The June 2009 Notice stated that July 15, 2009, was the deadline for asserting an administrative expense claim for the period from the commencement of these chapter 11 cases through June 1, 2009 (the "Initial Administrative Claim Bar Date"). In addition, on or before October 9, 2009, the Reorganized Debtors caused the notice of Effective Date¹ to be served on the Bureau (the Effective Date Notice, together with the June 2009 Notice, the "Notices") which, among other things, provided notice of the November 5, 2009, deadline for filing Administrative Claims arising on or after June 1, 2009 (the "Final Administrative Claim Bar Date," and together with the Initial Administrative Claim Bar Date, the "Administrative Claim Bar Dates"). The Bureau does not dispute that it received the Notices and that it had actual knowledge of the Administrative Claim Bar Dates. Nevertheless, more than eighteen months after the Initial Administrative Claim Bar Date and more than fourteen months after the Final Administrative

¹ Capitalized terms not defined in this Preliminary Statement are defined below.

Claim Bar Date, the Bureau now seeks to pursue claims for postpetition workers' compensation assessments in an unliquidated amount that will continue to accrue indefinitely into the future (the "Administrative Claim").

2. The Bureau has now requested, in the alternative, that the Administrative Claim, either should be (i) deemed timely under the informal proof-of-claim doctrine, (ii) permitted as a post-bar date amendment to the Proof of Claim, or (iii) permitted because the Bureau's failure to file the Administrative Claim prior to the Administrative Claim Bar dates was the result of excusable neglect. The Bureau's argument as to why the Court should permit the Bureau to pursue the Administrative Claim can be distilled down to the following: the Bureau—relying on an Ohio bankruptcy court decision that expressly was not intended for publication or citation—believed that filing its prepetition proof of claim—which makes no reference to any postpetition workers' compensation assessments—was sufficient to assert an administrative expense claim against the Debtors, despite this Court's orders to the contrary. The Bureau has not, and cannot, present any evidence that would justify the relief sought in the Motion. The Bureau is, therefore, forever barred, estopped, and enjoined from asserting the Administrative Claim against the Debtors or the Reorganized Debtors. (See Modification Procedures Order ¶ 38; Modified Plan § 10.5; Modification Approval Order ¶ 47.) Accordingly, the Motion should be denied.

Background

3. On October 8 and 14, 2005 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as then amended (the "Bankruptcy Code").

4. On December 27, 2005, the Bureau filed proof of claim number 1294 (the "Proof of Claim") against Delphi. The Proof of Claim asserted a prepetition unsecured priority

claim in the amount of \$24,732,628.02 stemming from amounts allegedly owed in connection with workers' compensation assessments.²

5. On June 22, 2009, the Debtors objected to the Proof of Claim pursuant to the Debtors' Thirty-Fourth Omnibus Objection Pursuant To 11. U.S.C. § 502(b) And Fed. R. Bankr. P. 3007 To (I) Expunge (A) Certain Pension And OPEB Claims, (B) Certain Individual Workers' Compensation Claims, (C) Certain Duplicate And/Or Amended Individual Workers' Compensation Claims, (D) Certain Untimely Individual Workers' Compensation Claims, (E) A Secured Books And Records Claim, And (F) Certain Untimely Claims, (II) Modify Certain (A) Wage And Benefit Claims, (B) State Workers' Compensation Claims, And (C) Individual Workers' Compensation Claims Asserting Priority, (III) Provisionally Disallow Certain Union Claims, And (IV) Modify And Allow Certain Settled Claims (Docket No. 17182) (the "Thirty-Fourth Omnibus Claims Objection"). The Debtors objected to the Bureau's classification of the Proof of Claim and sought to modify the Proof of Claim to a prepetition general unsecured claim.³

6. On July 16, 2009, the Bureau filed the Ohio Bureau Of Workers' Compensation's Response To Debtors' Thirty-Fourth Omnibus Objection To Claims (Docket No. 18346), asserting that the Proof of Claim should be classified as a priority claim.

² Although the Proof of Claim actually references the Debtors' obligation to pay workers' compensation "premiums," it is the Reorganized Debtors' understanding that the Proof of Claim actually relates only to workers' compensation assessments applicable under the same Ohio statute. The Debtors' operated as self-insurers in Ohio and, as a result, were not obligated to pay workers' compensation insurance premiums.

³ The Bureau suggests in the Motion that "the Reorganized Debtors did not contest that the Claim was one for priority taxes under section 507(a)(8)(E) of the Bankruptcy Code." (Motion ¶ 17.) This is incorrect. In addition to the Debtors' explicit objection to priority treatment in the Thirty-Fourth Omnibus Claims Objection, the Reorganized Debtors expressly reserved their rights to contest priority treatment in footnote 5 of their Second Supplemental Reply Regarding Claim Filed Ohio Bureau Of Workers' Compensation (defined below) and on the record at the subsequent hearing (Hr'g Tr. 35:17-36:13, Dec. 16, 2010).

7. On July 30, 2009, this Court entered its Order Approving Modifications Under 11 U.S.C. § 1127(b) To (I) First Amended Joint Plan Of Reorganization Of Delphi Corporation And Certain Affiliates, Debtors And Debtors-In-Possession, As Modified And (II) Confirmation Order (Docket No. 12359) (Docket No. 18707) (the "Modification Approval Order"), which approved the First Amended Joint Plan Of Reorganization Of Delphi Corporation And Certain Affiliates, Debtors And Debtors-In-Possession, As Modified (the "Modified Plan").

8. On October 6, 2009 (the "Effective Date"), the Debtors substantially consummated the Modified Plan and closed the transactions under the Master Disposition Agreement, dated as of July 30, 2009, by and among Delphi, GM Components Holdings, LLC, General Motors Company, Motors Liquidation Company (f/k/a General Motors Corporation), DIP Holdco 3 LLC (which assigned its rights to DIP Holdco LLP, subsequently renamed Delphi Automotive LLP, a United Kingdom limited liability partnership), and the other sellers and buyers party thereto. The Debtors emerged from chapter 11 as the Reorganized Debtors and remain responsible for the post-Effective Date administration of these chapter 11 cases, including the disposition of certain retained assets, the payment of certain retained liabilities as provided for under the Modified Plan, and the eventual closing of the cases.

9. On December 6, 2010, the Reorganized Debtors filed their Supplemental Reply To Response Of Claimant To Debtors' Objection To Proof Of Claim Number 1294 Filed By Ohio Bureau Of Workers' Compensation (Docket No. 20977), seeking disallowance of the Proof of Claim because all prepetition workers' compensation assessments had been paid in full.

10. On December 14, 2010, the Bureau filed the Response Of The Ohio Bureau Of Workers' Compensation To Reorganized Debtors' Supplemental Reply To Response Of Claimant To Debtors' Objection To Proof Of Claim Number 1294 Filed By Ohio Bureau Of Workers' Compensation (Docket No. 21003).

11. On December 15, 2010, the Reorganized Debtors filed their Second Supplemental Reply To Supplemental Response Of Claimant To Debtors' Objection To Proof Of Claim Number 1294 Filed By Ohio Bureau Of Workers' Compensation (Docket No. 21008) (the "Second Supplemental Reply Regarding Claim Filed By Ohio Bureau Of Workers' Compensation").

12. On December 16, 2010, the Court held a hearing to address the legal sufficiency of the Proof of Claim. After hearing argument from the Reorganized Debtors and the Bureau, the court ruled that the Proof of Claim was disallowed without prejudice to the Bureau's right to seek further relief under Federal Rule of Bankruptcy Procedure 9006. (Hr'g Tr. 47:1-2, Dec. 16, 2010.)

13. On December 20, 2010, the Court entered its Order Pursuant To 11 U.S.C. § 503(b) And Fed. R. Bankr. P. 3007 Disallowing And Expunging Proof Of Claim Number 1294 Filed By Ohio Bureau Of Workers' Compensation (Docket No. 21027). The Bureau did not appeal.

14. On January 24, 2011, more than eighteen months after the Initial Administrative Claim Bar Date and more than fourteen months after the Final Administrative Claim Bar Date, the Bureau filed the Motion advancing three arguments for why the Bureau believes it should be permitted to pursue the late Administrative Claim. Specifically, the Bureau argues that the Administrative Claim should be either (i) deemed timely under the informal proof-of-claim doctrine, (ii) permitted as a post-bar date amendment to the Proof of Claim, or (iii) permitted because the Bureau's failure to file the Administrative Claim prior to the Administrative Claim Bar dates was the result of excusable neglect.

B. The Bar Dates and Deadlines for Asserting Claims

15. Bar Date for § 503(b) Claims Arising Through June 1, 2009. On June 16, 2009, this Court entered the Order (A)(I) Approving Modifications To Debtors' First Amended Plan Of Reorganization (As Modified) And Related Disclosures And Voting Procedures And (II) Setting Final Hearing Date To Consider Modifications To Confirmed First Amended Plan Of Reorganization And (B) Setting Administrative Expense Claims Bar Date And Alternative Transaction Hearing Date, entered by this Court on June 16, 2009 (Docket No. 17032) (the "Modification Procedures Order") which, among other things, authorized the Debtors to commence solicitation of votes on the Modified Plan, established July 15, 2009, as the Initial Administrative Claim Bar Date,⁴ and included a form to be used to submit an administrative expense claim (an "Administrative Claim Form").⁵ Accordingly, paragraph 38 of the Modification Procedures Order provided that:

Any party that wishes to assert an administrative claim under 11 U.S.C. § 503(b) for the period from the commencement of these cases through June 1, 2009 shall file a proof of administrative expense (each, an "Administrative Expense Claim Form") for the purpose of asserting an administrative expense request, including any substantial contribution claims (each, an "Administrative Expense Claim" or "Claim") against any of the Debtors. July 15, 2009 at 5:00 p.m. prevailing Eastern time shall be the deadline for submitting all Administrative Expense Claims (the "Administrative Expense Bar Date") for the period from the commencement of these cases through June 1, 2009.

⁴ The Initial Administrative Claim Bar Date was established pursuant to paragraph 38 of the Modification Procedures Order. On July 15, 2009, this Court entered the Stipulation And Agreed Order Modifying Paragraph 38 Of Modification Procedures Order Establishing Administrative Expense Bar Date (Docket No. 18259) to provide that paragraph 38 of the Modification Procedures Order should be amended to require parties to submit an Administrative Claim Form (as defined below) for Administrative Claims for the period from the commencement of these cases through May 31, 2009, rather than through June 1, 2009.

⁵ On June 20, 2009, in accordance with the Modification Procedures Order, the Debtors caused Kurtzman Carson Consultants LLC ("KCC") and Financial Balloting Group LLC or their agents to transmit notices containing certain procedures for asserting an Administrative Claim and a copy of the Administrative Claim Form.

(Modification Procedures Order ¶ 38.) In addition, paragraph 41 of the Modification Procedures Order provides that:

Any party that is required but fails to file a timely Administrative Expense Claim Form shall be forever barred, estopped and enjoined from asserting such claim against the Debtors, and the Debtors and their property shall be forever discharged from any and all indebtedness, liability, or obligation with respect to such claim.

(Id. at ¶ 41.)

16. On or before June 20, 2009, the Debtors, through KCC, the claims and noticing agent in these chapter 11 cases, served the Bureau with a copy of the June 2009 Notice by first class mail at the following address:

Ohio Bureau of Workers Compensation
Law Section Bankruptcy Unit
30 W Spring St
PO Box 15567
Columbus, OH 43215-0567

See Affidavit Of Service Of Evan Gershbein For Solicitation Materials Served On Or Before June 20, 2009, dated June 23, 2009 (Docket No. 17267), the relevant portions of which are attached hereto as Exhibit A.

17. Bar Date for § 503(b) Claims Arising after June 1, 2009. Paragraph 47 of the Modification Approval Order provides in part:

[R]equests for payment of an Administrative [Expense] Claim (other than as set forth in the Modified Plan or otherwise contemplated by the Master Disposition Agreement, i.e., for such claims arising on or after June 1, 2009) must be filed, in substantially the form of the Administrative Claim Request Form attached as Exhibit 10.5 to the Modified Plan, with the Claims Agent and served on counsel for the Debtors and the Creditors' Committee no later than 30 days notice of after the Effective Date is filed on the docket of the Chapter 11 Cases. **Any request for payment of an Administrative Claim pursuant to this paragraph that is not timely filed and served shall be**

disallowed automatically without the need for any objection from the Debtors or the Reorganized Debtors.

(Modification Approval Order ¶ 47 (emphasis added).)

18. In compliance with paragraph 47 of the Modification Approval Order, the Notice Of (A) Order Approving Modifications To First Amended Joint Plan Of Reorganization Of Delphi Corporation And Certain Affiliates, Debtors And Debtors-In-Possession And (B) Occurrence Of Effective Date (Docket No. 18958) (the "Effective Date Notice") was filed with this Court on October 6, 2009. Upon the occurrence of the Effective Date on October 6, 2009, the Final Administrative Claim Bar Date was recognized as November 5, 2009. As set forth above, paragraph 47 of the Modification Approval Order provides that any administrative claim for which a party has failed to timely file and serve a request for payment is automatically disallowed without the need for any objection from the Debtors or the Reorganized Debtors.

19. On or before October 9, 2009, KCC served the Bureau by first class mail with a copy of the Effective Date Notice (at the address set forth in the creditor matrix), which, among other things, provided notice of the Final Administrative Claim Bar Date at the following address:

Ohio Bureau of Workers Compensation
Law Section Bankruptcy Unit
30 W Spring St
PO Box 15567
Columbus, OH 43215-0567

See Affidavit Of Service Of Evan Gershbein For Notice Of Effective Date Materials Served On Or Before October 9, 2009, dated October 14, 2009 (Docket No. 18978), the relevant portions of which are attached hereto as Exhibit B.

20. Moreover, notice of the Final Administrative Claim Bar Date was also published in The New York Times, USA Today (national and international editions), and The

Wall Street Journal (national and global editions). (See Affidavits of Publication at Docket Nos. 18990, 18989, and 19001.)

Argument

C. The Bureau Received Notice of Administrative Claim Bar Dates

21. As a preliminary matter, the Bureau does not dispute that it received the Notices setting forth the Administrative Claim Bar Dates. As discussed above, the Debtors provided adequate service of the June 2009 Notice and the Effective Date Notice. Courts uniformly presume that an addressee receives a properly mailed item when the sender presents proof that it is properly addressed, stamped, and deposited in the mail. See, e.g., Hagner v. U.S., 285 U.S. 427, 430 (1932) ("The rule is well settled that proof that a letter properly directed was placed in a post office creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed."). The Bureau was, therefore, obligated to file any administrative expense claims before the applicable Administrative Claim Bar Dates, in accordance with the procedures referenced in the Modification Procedures Order and Modification Approval Order, or be barred, estopped, and enjoined from asserting those claims against the Reorganized Debtors. Accordingly, this Court should deny the Motion.

D. The Proof of Claim Does Not State a Claim for Postpetition Administrative Expenses

(a) The Proof of Claim Is Not an Informal Proof of Administrative Expense Claim

22. The Bureau begins its argument by requesting that the Court deem the Proof of Claim to be a timely filed administrative expense claim. To qualify as an informal proof of claim, the Proof of Claim "must have (1) been timely filed with the bankruptcy court and have become part of the judicial record, (2) state the existence and nature of the debt, (3) state the amount of the claim against the estate, and (4) evidence the creditor's intent to hold the debtor liable for the debt." In re Enron Creditors Recovery Corp., 370 B.R. 90, 99 (Bankr.

S.D.N.Y. 2007) (citing Houbigant, Inc. v. ACB Mercantile, Inc. (In re Houbigant, Inc.), 190 B.R. 185, 187 (Bankr. S.D.N.Y. 1995)). The Motion does not, and cannot, explain how the Proof of Claim satisfies these factors.

23. Instead, the Bureau contends that it chose to "file[] its Claim as a pre-petition priority tax claim in reliance on Ohio case law." (Motion ¶ 23.) In support of this assertion, however, the Bureau cites only to an unpublished opinion by the U.S. Bankruptcy Court for the Northern District of Ohio, In re Belden Locker Co., No. 06-60316, 2008 WL 762243 (Bankr. N.D. Ohio Mar. 21, 2008). To be sure, the Bureau could not have relied on Belden Locker when it filed the Proof of Claim because that case was not decided until more than two years later.

24. The Bureau goes on to state, in conclusory fashion, that "there is no question that the [Proof of Claim] satisfies the requirements for a deemed filed informal administrative expense claim [because it] is a writing, filed with the Court, which specifies the existence and nature of [the Bureau's] claim, and makes it clear that [the Bureau] holds the Debtors liable for the workers' compensation assessments." (Motion ¶ 26.) A review of the Proof of Claim, however, reveals that it falls well short of establishing an informal claim for administrative expenses. Although the Proof of Claim was filed prior to the Administrative Claim Bar Dates, the Proof of Claim does not satisfy the final three requirements for an informal proof of claim. Nowhere does the Proof of Claim state that the Bureau may be entitled to payment of an administrative expense, or that the Bureau is asserting a claim for any postpetition assessments. Not once does the Bureau indicate that the Proof of Claim includes any contingent liabilities or an estimate of future assessments. Nor does the Proof of Claim even hint at the Bureau's intent to hold the Debtors liable for postpetition assessments.

25. In fact, the Proof of Claim does not even mention assessments, but instead references the Debtors' obligations to pay workers' compensation premiums⁶—as a self-insurer, the Debtors were never obligated to pay premiums. Attached to the Proof of Claim is a spreadsheet that lists various amounts for years 2001 through 2005 and indicates that the total amount of the claim is \$24,732,628.02.⁷ The Reorganized Debtors do not know, nor has the Bureau explained, how these amounts were derived. In any event, the Proof of Claim fails to evidence any claim for payment of postpetition workers' compensation assessments, let alone with the degree of specificity necessary to establish an informal proof of claim. See In re L.F. Rothschild Holdings, Inc., 143 B.R. 335, 336 (S.D.N.Y. 1992) ("Where an informal proof of claim has been accepted, it has been required to contain a specific demand setting forth the amount and nature of the debt and the intent to hold the debtor liable." (citing In re Nutri*Bevco, Inc., 117 B.R. 771, 789 (Bankr. S.D.N.Y. 1990))).

26. In the absence of any mention of postpetition workers' compensation assessments in the Proof of Claim, the Bureau seems to be relying on the mere existence of a claim for prepetition workers' compensation assessments as evidence of the Bureau's intent to hold the Debtors liable for all future assessments. As discussed in greater detail below, and as

⁶ In the context of premium payments, the Proof of Claim cites OHIO REV. CODE ANN. § 4123.35, which also relates to the payment of workers' compensation assessments. As described below, the spreadsheet attached to the Proof of Claim references an Ohio Administrative Code Rule, which also relates to assessments. But mere citation to these provisions, without more, cannot be relied on to transform the prepetition Proof of Claim into an informal claim for administrative expenses. See Enron Creditors Recovery, 370 B.R. at 99 ("Merely referencing [an] agreement . . . in [a proof of claim] does not evidence an intention to hold Enron liable for the debt.").

⁷ Near the total amount on the spreadsheet, the Bureau includes a reference to "Ohio Administrative Code Rule 4123-17-32(G) declining balance factor." Ohio Administrative Code Rule 4123-17-32(G) provides that "[a]n employer who no longer is a self-insuring employer in Ohio or who no longer is operating in this state shall continue to pay assessments for administrative costs and for the portion of the surplus fund that is mandatory," and sets forth multiples for determining such rates in a given year. Thus, the rule establishes alternative assessment rates for certain classes of employers. At the time the Proof of Claim was filed, however, this rule was inapplicable to the Debtors, who continued to operate as self-insured employers through the Effective Date of the Modified Plan.

previously recognized by this Court, each year that assessments are levied represents a separate claim. The Bureau cannot demonstrate its intent to hold the Debtors liable for postpetition assessments based solely on allegations of the Debtors' knowledge of the claim for prepetition assessments in the Proof of Claim. In re Manville Forest Prods Corp., 89 B.R. 358, 377 (Bankr. S.D.N.Y. 1988) ("Debtor's mere knowledge of the creditor's claim has never been held to be sufficient to constitute an informal proof of claim."); see also United States v. Int'l Horizons, Inc. (In re Int'l Horizons, Inc.) 751 F.2d 1213, 1217 (5th Cir. 1985) ("[M]ere notice of a claim alone is not to be called an informal proof of claim and does not excuse the absence of a proper timely proof as the law requires. An informal claim may be asserted, if it can be at all, only when it is apparent that the creditor intends to seek recovery from the estate and when the informal proof of claim is 'filed' prior to the bar date."); Wilkens v. Simon Bros., 731 F.2d 462, 465 (7th Cir. 1984) ("The general rule is that a claim arises where the creditor evidences an intent to assert its claim against the debtor. Mere knowledge of the existence of the claim by the debtor, trustee or bankruptcy court is insufficient.").⁸

27. Accordingly, the Proof of Claim does not satisfy the requirements to establish an informal administrative expense claim for postpetition workers' compensation assessments.

(b) The Proof of Claim Fails to Comply with the Modification Procedures Order

28. The Modification Procedures Order also undercuts the Bureau's reliance on the Proof of Claim as a basis to assert the Administrative Claim against the Reorganized Debtors. The Modification Procedures Order expressly provided that creditors would be entitled

⁸ At a minimum, the Bureau could have stated in the Proof of Claim that workers' compensation assessments would continue to accrue after the Petition Date and reserved the right to amend the Proof of Claim to include the liquidated amount of any postpetition assessments.

to rely on an existing proof of claim, and would not be required to file a subsequent administrative expense claim prior to the Administrative Claim Bar Dates, so long as "such proof of claim clearly and unequivocally sets forth that such claim is made for an administrative expense priority." (Modification Procedures Order ¶ 39 (emphasis added).) As discussed above, the Proof of Claim contains nothing that approaches a clear and unequivocal assertion of an administrative expense claim. Consequently, the Bureau clearly was on notice that it was required to file an administrative expense claim prior to the Administrative Claim Bar Dates to preserve any claim for unpaid postpetition assessments and that it could not rely on the Proof of Claim. Having failed to so, any such claim is now barred.

E. Circuit Precedent Does Not Permit the Bureau to Amend Its Prepetition Proof of Claim to Include Postpetition Administrative Expenses

29. Alternatively, the Bureau argues that if the Proof of Claim is not deemed to constitute an administrative expense claim for postpetition expenses, then the Bureau should be permitted to amend the Proof of Claim to include the Administrative Claim. At the outset, the Reorganized Debtors' note that this Court previously disallowed and expunged the Proof of Claim in its entirety pursuant to its December 20, 2010, order (Docket No. 21027). The Bureau did not appeal that order. Thus, the Reorganized Debtors do not believe that the Bureau can resuscitate the Proof of Claim. There is no claim left to amend. Allowing the Bureau to amend the Proof of Claim would circumvent the Court's prior order and would open the door for other creditors whose claims have been disallowed to seek the same relief.

30. Nevertheless, even if the Bureau is able to seek amendment of the Proof of Claim, the proposed amendment is not permitted. As set forth in Midland Cogeneration Venture Limited Partnership v. Enron Corp. (In re Enron Corp.), 419 F.3d 115 (2d Cir. 2005), a "two-step inquiry" determines whether a claimant can amend a timely claim after the applicable bar date.

In that case, the Second Circuit directed that "the court must subject post bar date amendments to careful scrutiny to assure that there was no attempt to file a new claim under the guise of an amendment." Id. at 133 (internal quotations omitted). The Bureau's proposed amendment does not pass this careful scrutiny.

(a) Step One: Administrative Claim Does Not Relate Back to the Proof of Claim

31. The first step is to "examine whether there was [a] timely assertion of a similar claim or demand evidencing an intention to hold the estate liable." Id. (internal quotations omitted) (alteration in original). To meet this requirement, the amendment must be one that "corrects a defect of form in the original claim," "describes the original claim with greater particularity," or "pleads a new theory of recovery on the facts set forth in the original claim." Id. (internal quotations omitted).

32. The Bureau offers little in support of the first prong of the two-part test, arguing only that "the amended claim stems from the same assessments for the same injuries that form the factual basis of the Claim." (Motion ¶ 31.) But this argument was already addressed by the Court in connection with the Reorganized Debtors' objection to the Proof of Claim. As the Court explained at the hearing, the Bureau's claim for postpetition assessments arises from the Bureau's own administrative costs for the previous calendar year, and not from previous assessments or injuries:

[T]he payment of [employees' workers' compensation] claims is not the injury that's the basis for this claim. The basis for this claim is the administrative costs incurred by the bureau for that particular year, which is wholly postpetition. . . . My focus really needs to be on the injury, in other words, and when that accrued. And here I believe . . . the accrual of the claim or the tax or the injury is, again, the administrative costs incurred by the bureau for the year.

(Hr'g Tr. 44:4-8, 17-22, Dec. 16, 2010.)

33. The Court also reached a similar conclusion on nearly identical facts when it denied the Michigan Funds Administration's request to amend its timely filed administrative expense claim to include additional future postpetition workers' compensation assessments. (Hr'g Tr. 60:10-61:16, Aug. 27, 2010.) There, the Court found that the proposed amendment was "on the face of the claims, and under the law, clearly a new claim for a new year and not based on the facts of the assessment set forth in the [original] claim." (*Id.* at 60:10-14.) In particular, the Court reasoned that claims for workers' compensation assessments "should be treated as separate claims if they are based upon annual calculations as these claims are" unless there is a "clear reservation of rights or assertion of an unliquidated contingent claim for the future set forth in the original proof of claim."⁹ (*Id.* at 60:19-23.)

34. The Court's approach—treating assessment claims for different years as new, separate claims that do not relate back to an earlier claim for purposes of amendment—is consistent with the approach adopted by the majority of courts considering the issue.¹⁰ *In re*

⁹ The Bureau's proposed amendment of the Proof of Claim is even more dubious than the Michigan Funds Administration's proposed amendment because the Administrative Claim is materially different in kind from the Proof of Claim. The Michigan Funds Administration sought to amend its timely filed administrative expense claim to include additional administrative expenses for future years. The Bureau's proposed amendment, on the other hand, would improperly bestow administrative-priority status upon what otherwise would have been a general unsecured claim. See *In re Alliance Operating Corp.*, 60 F.3d 1174, 1175-77 (5th Cir. 1995) (holding that claimant who filed general unsecured claim for workers' compensation premiums was not entitled to amend claim to include postpetition workers' compensation premiums because, among other things, "amendments to proofs of claim that change the nature of the claim from an unsecured status to a priority status set forth a new claim"). As the Court noted at the December 16, 2010, hearing, it is questionable whether the type of workers' compensation assessments asserted in the Proof of Claim would qualify as excise taxes entitled to priority treatment. (Hr'g Tr. 36:14-20, 42:21-25, Dec. 16, 2010.)

¹⁰ As the Reorganized Debtors have previously noted, courts adhering to this majority approach include both the Fifth Circuit, *United States v. Waindel* (In re Waindel), 65 F.3d 1307, 1311-12 (5th Cir. 1995), and the Seventh Circuit, *In re Stavriotis*, 977 F.2d 1202, 1206 n.4 (7th Cir. 1992); *In re Unroe*, 937 F.2d 346, 349 (7th Cir. 1991), as well as district courts and bankruptcy courts in the Second Circuit, *In re PT-1 Commc'ns, Inc.*, 292 B.R. 482, 487 (Bankr. E.D.N.Y. 2003), the Third Circuit, *In re Cont'l Airlines, Inc.*, 183 B.R. 698, 699 (D. Del. 1995); *In re Blue Coal Corp.*, 166 B.R. 816, 821 (M.D. Pa. 1993); *United States v. Owens*, 84 B.R. 361, 363 (E.D. Pa. 1988), the Fourth Circuit, *United States v. Roberson*, 188 B.R. 364, 365-66 (D. Md. 1995); *In re Rains*, 139 B.R. 158, 159-60 (Bankr. D. Md. 1992), the Sixth Circuit, *In re Chavis*, 160 B.R. 804, 806 (Bankr. S.D. Ohio 1993), *aff'd*, 47 F.3d 818 (6th Cir. 1995); *In re Johnson*, 84 B.R. 492, 494 (Bankr. N.D. Ohio 1988), *aff'd*, 901 F.2d 513 (cont'd)

Gilley, 288 B.R. 901, 905 (Bankr. M.D. Fla. 2002) ("With regard to the threshold issue of whether an amendment to a proof of claim to add a different tax period can relate back to the originally filed claim, the majority of courts conclude that different years give rise to different claims."); Blue Coal Corp., 166 B.R. at 821 ("We are compelled to agree with the majority of cases and . . . conclude that a tax claim for one year is as dissimilar to a tax claim for another year as it might be to a vehicular accident with a government vehicle."). The few cases where courts have allowed amendments to include subsequent tax periods have turned on the continuous nature of the taxes at issue—for example, certain employment-related taxes—that "accumulate as they accrue." In re Sage-Dey, Inc., 170 B.R. 46, 50-51 (Bankr. N.D.N.Y. 1994) (permitting post-bar date amendment for quarterly assessed FICA taxes); see also, e.g., Industrial Comm'r v. Schneider, 162 F.2d 847, 848-49 (2d. Cir. 1947) (permitting post-bar date amendment for quarterly assessed taxes levied under state law where "computation of the amounts due as contributions from employers under the statute depended upon factors which continued constant irrespective of quarterly periods").

35. The workers' compensation assessments at issue here that comprise the Administrative Claim are not continuous in nature. Rather, the assessments are levied on a yearly basis and accrue annually. OHIO REV. CODE ANN. § 4123.35(J). The assessments are based on both the individual self-insurer's total workers' compensation payments for the prior year and the aggregate yearly payments made by all self-insurers. Id. Moreover, the Proof of Claim contains no clear reservation of rights or contingent claim for postpetition assessments.

(cont'd from previous page)

(6th Cir. 1990), the Eighth Circuit, United States v. Baker (In re Baker), 129 B.R. 607, 608 (E.D. Mo. 1991), the Tenth Circuit, Sunwest Hotel Corp. ex rel. Chequers Inv. Assocs. II v. Bd. of County Comm'rs of Reno County, Kan. (In re Sunwest Hotel Corp.), Nos. 92-40079-11, et al., 1998 WL 982905, at *9 (D. Kan. Sept. 29, 1998); In re Ltd. Gaming of Am., Inc., 213 B.R. 369, 373 (Bankr. N.D. Okla. 1997), and the Eleventh Circuit, Gilley, 288 B.R. at 905; In re Appling, 162 B.R. 43, 46 (Bankr. M.D. Ga. 1993).

Accordingly, the Bureau cannot show that the Administrative Claim relates back to the Proof of Claim. The Bureau's request to amend the Proof of Claim should, therefore, be denied.

(b) Step Two: It Would Be Inequitable to Allow the Amendment

36. No further analysis under the two-step test is necessary if the first step is not satisfied. In re Macmillan, Inc., 186 B.R. 35, 49 (Bankr. S.D.N.Y. 1995); Sage-Dey, Inc., at 49. If the amendment satisfies the first step, however, and relates back to a claim filed before the bar date, courts proceed to step two and "examine each fact within the case and determine whether it would be equitable to allow the amendment." Midland Cogeneration, 419 F.3d at 133 (internal quotations omitted).

37. As the Second Circuit noted, step two of the amended-claim analysis "closely resembles" the standard for deciding whether a party's failure to file a timely claim was the result of "excusable neglect" under Fed. R. Bankr. P. 9006(b)(1) and Pioneer Investment Services Co. v. Brunswick Associates, L.P., 507 U.S. 380 (1993). Midland Cogeneration, 419 F.3d at 133. Accordingly, the equitable factors pertinent to both the Bureau's request to amend the Proof of Claim and to file a late Administrative Claim on account of excusable neglect under Pioneer are discussed together below. As will be described, the balance of the equities weighs in favor of the Reorganized Debtors.

F. The Bureau Has Not Met Its Burden of Proof to Establish Excusable Neglect

38. The Bureau's final argument is that, if the Proof of Claim cannot be amended or deemed to assert the Administrative Claim, then the Bureau's failure to file the Administrative Claim in a timely matter was the result of excusable neglect. As discussed above, the Bureau received proper notice of the Administrative Claim Bar Dates. The Bureau, therefore,

bears the burden to establish excusable neglect pursuant to Bankruptcy Rule 9006(b)(1).¹¹ See In re R.H. Macy & Co., 161 B.R. 355, 360 (Bankr. S.D.N.Y. 1993) ("the burden of proving 'excusable neglect' is on the creditor seeking to extend the bar date"); see also In re Dana Corp., No. 06-10354, 2007 WL 1577763, at *3 (Bankr. S.D.N.Y. May 30, 2007) (finding that the excusable neglect analysis applies to administrative expense claims under section 503). As this Court previously observed, "given the practice of treating claims and disputes related to missed bar dates for administrative claims the same way as the courts treat missed bar dates for pre-petition claims, I find . . . those cases . . . to be appropriate here, and for all intents and purposes on all fours." (Hr'g Tr. 44-45, Aug. 27, 2009.)

39. Under Pioneer, courts must engage in a two-prong analysis. Mich. Self-Insurers' Security Fund v. DPH Holdings Corp. (In re DPH Holdings Corp.), 434 B.R. 77, 82 (S.D.N.Y. 2010) (citing Pioneer, 507 U.S. at 388, 395). First, a creditor must first show that its failure to file a timely claim was the result of "'neglect,' as opposed to willfulness or a knowing omission." Order Pursuant To 11 U.S.C. § 502(b) And Fed. R. Bankr. P. 3007 (I) Denying United States Of America's Motion For Leave To File Late Claim And (II) Disallowing And Expunging Proof Of Claim Number 16727, at Ex. A p. 2, Mar. 6, 2008 (Docket No. 12980) (citing Pioneer, 507 U.S. at 387-88), aff'd Mar. 24, 2009 (Docket No. 16515). Second, the creditor "must show by a preponderance of the evidence that the neglect was 'excusable.'" Id.

40. Under the present circumstances, it does not appear that the Bureau can satisfy even the first prong of the Pioneer test. Specifically, the Bureau argues that it failed to file a timely administrative claim because it was relying instead on Belden Locker to pursue

¹¹ Rule 9006(b)(1) provides that, "when an act is required or allowed to be done at or within a specified period . . . the court for cause shown may at any time in its discretion . . . on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect."

claims for postpetition workers' compensation assessments. (Motion ¶¶ 23, 49.) Thus, the Bureau's failure to file a timely administrative expense claim was not the result of neglect at all, but was part of a willful, deliberate decision on the part of the Bureau.¹² While the Bureau may now regret its decision to rely on Belden Locker,¹³ a calculated strategic decision—however imprudent—cannot support a claim of excusable neglect.

41. Even if the Bureau were able to demonstrate that its failure to file an administrative expense claim was the result of neglect, the Bureau has not met its burden to establish that the neglect was excusable. In Pioneer, the Supreme Court examined four factors to determine whether a creditor's failure to file a claim by the bar date constituted excusable neglect: "[1] the danger of prejudice to the debtor, [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith." Id. at 395. Although the third factor of the Pioneer test—the reason for the delay—is often dispositive, in this case three factors weigh in favor of the Reorganized Debtors: the reason for the delay, the prejudice to the Reorganized Debtors, and the length of the delay. Accordingly, the Bureau cannot establish excusable neglect and the Motion should be denied.

(i) Reason for the Delay

42. In the Second Circuit, the reason for the delay is the most important factor and is often dispositive. See Midland Cogeneration, 419 F.3d at 122-24; In re Musicland Holding

¹² In similar circumstances, the Second Circuit has recognized that willfulness does not necessarily entail a showing of bad faith or wrongful conduct. Gucci Am., Inc. v. Gold Ctr. Jewelry, 158 F.3d 631, 634-35 (2d. Cir. 1998). Rather, it is sufficient that the Bureau knew about the Administrative Claim Bar Dates and chose not to file an administrative expense claim. See id.

¹³ As discussed on the record at the December 16, 2010, hearing, Belden Locker was wrongly decided. (Hr'g Tr. 43:12-44:8, Dec. 16, 2010; see also Second Supplemental Reply Regarding Claim Filed Ohio Bureau Of Workers' Compensation ¶¶ 3-6.)

Corp., 356 B.R. 603, 608 (Bankr. S.D.N.Y. 2006) (noting that the Second Circuit emphasizes the reason for the delay in determining excusable neglect). Indeed, the reason for the delay may be the only factor that a court considers, as "the other factors are relevant only in close cases." Williams v. KFC Nat'l Mgmt. Co., 391 F.3d 411, 415-16 (2d Cir. 2004).

43. The Bureau first argues that its failure to file a timely administrative claim was outside of its control due to its own mistaken reliance on Belden Locker.¹⁴ But to the extent that the Bureau made a conscious decision to rely wholly on Belden Locker—even though the case, by its own terms, was never intended for publication or citation, Belden Locker, 2008 WL 762243, at *1—and not to file an administrative expense claim, the responsibility for that decision lies exclusively with the Bureau. Moreover, the Bureau's mistaken reliance on Belden Locker does not demonstrate excusable neglect. It is widely accepted in this jurisdiction and in others that "[l]egal mistakes are usually not considered excusable neglect." In re DPH Holdings Corp., 434 B.R. at 85; see also Kyle v. Campbell Soup Co., 28 F.3d 928, 931-32 (9th Cir. 1994) ("[C]ounsel has not presented a persuasive justification for his misconstruction of nonambiguous rules. Accordingly, there is no basis for deviating from the general rule that a mistake of law does not constitute excusable neglect."); In re Singer Co., No. M-47, 2002 WL 10452, at *3 (S.D.N.Y. Jan. 3, 2002) ("Judge Lifland's decision that the Union's mistake as to the applicable law was not excusable neglect is a reasonable one and one that this court will not disturb."); In re Bushnell, 273 B.R. 359, 368-69 (Bankr. D. Vt. 2001) (citing string of cases from multiple

¹⁴ In the Motion, the Bureau also (incorrectly) attributes this mistake to the Debtors: "BWC (and for years, the Debtors) erroneously thought that the Claim was properly classified as a pre-petition claim, not an administrative expense claim." To be clear, the Reorganized Debtors continue to believe—as discussed above—that the Proof of Claim asserts only a prepetition claim because it makes no mention of any postpetition obligations. Neither the Debtors, nor the Reorganized Debtors, have ever "erroneously thought" that the Proof of Claim included postpetition liabilities that would constitute an administrative expense claim.

jurisdictions supporting proposition that mistake of law does not meet the standard for establishing excusable neglect).

44. The Bureau's reliance on the Supreme Court's decision in Krupski v. Costa Crociere S.p.A., 130 S. Ct. 2485 (2010), is inapposite here. At issue in Krupski was the application of Federal Rules of Civil Procedure 15(c)(1)(C)(ii) regarding when an amended pleading relates back to the original pleading if the defendant added by the amendment "knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity." Id. at 2489-90, 2493-96. Even if Krupski were somehow relevant to the relief sought in the Motion, it would not help the Bureau because there is no evidence to suggest that the Debtors knew or should have known about the Bureau's mistaken reliance on Belden Locker prior to the Administrative Claim Bar Dates.

45. Accordingly, not only was the Bureau's mistake in relying on Belden Locker and not filing an administrative expense claim was entirely within the control of the Bureau, but the Bureau's mistaken interpretation of the law does not even provide valid reason to support a claim of excusable neglect.

46. The Bureau's second argument is that the Bureau is not responsible for allegedly mischaracterizing the Administrative Claim because, had the Bureau not filed the Proof of Claim prior to the bar date for filing prepetition claims, the Debtors would have taken the view that the Administrative Claim was actually a prepetition claim and, therefore, untimely. (Motion ¶¶ 27, 32.) This argument is without merit. Unlike the Bureau, the Michigan Funds Administration filed a timely administrative expense claim for workers' compensation assessments. The Reorganized Debtors did not argue that claim was a prepetition claim and, in fact, adhered to the same approach as they are now taking with the Bureau—that a claim for workers' compensation assessments accrues within the time period covered by the assessments.

(See generally Second Supplemental Reply Regarding Claim Filed By Michigan Funds Administration (Docket No. 20547).) In addition to the Proof of Claim, the Bureau easily could have filed a timely administrative expense claim. Only the Bureau is to blame for its failure to do so.

47. Courts in the Second Circuit have "taken a hard line" in applying the Pioneer test and focus on the reason for the delay, including whether it was within the reasonable control of the movant. Silivanch v. Celebrity Cruises, Inc., 333 F.3d 355, 368 (2d Cir. 2003). "[T]he equities will rarely if ever favor a party who fail[s] to follow the clear dictates of a court rule [and] where the rule is entirely clear, we continue to expect that a party claiming excusable neglect will, in the ordinary course, lose under the Pioneer test." Midland Cogeneration, 419 F.3d at 122-23. The Bureau's refrain throughout the Motion is that the Debtors should have known about the Administrative Claim. They did not. On the other hand, the Bureau does not dispute its own actual knowledge of its potential claims for postpetition workers' compensation assessments. Yet, the Bureau failed to follow this Court's orders and to file proofs of administrative expense by the Administrative Claim Bar Dates. Consequently, the Bureau's own actions are the reason for the delay. This factor, therefore, weighs heavily in favor of the Reorganized Debtors and, indeed, is dispositive of the Bureau's allegations of excusable neglect.

(ii) Danger of Prejudice to the Debtor

48. Allowing the Bureau to file a late claim more than sixteen months after the consummation of the Modified Plan will prejudice the Reorganized Debtors as well as other creditors in these cases who filed timely administrative expense claims.

49. Citing Krupski, the Bureau argues that there is no prejudice to the Reorganized Debtors because they "should have known that, but for a mistake in timing, [the Bureau] would have properly filed a claim." (Motion ¶ 24.) Although Krupski is not relevant

here, other cases have recognized that a debtor's actual knowledge of a claim in advance of a bar date is relevant to an excusable-neglect inquiry. See, e.g., Midland Cogeneration, 419 F.3d at 130. Again, however, neither the Debtors nor the Reorganized Debtors knew about the Administrative Claim prior to the Administrative Claim Bar Dates because the Bureau failed to assert it. Moreover, simply because workers' compensation assessments accrue annually does not excuse the Bureau from filing a timely claim. *See*, for example, the cases cited at footnote 9 above.

50. The Bureau further argues that denying the Bureau relief will result in a windfall to other creditors. This argument is predicated on an apparent misunderstanding of the Modified Plan and the Master Disposition Agreement under which the Debtors emerged from chapter 11. Any distribution to general unsecured creditors will come from Delphi Automotive LLP and not the Reorganized Debtors. (See Modified Plan § 5.3.) Furthermore, the Modified Plan already provides for payment in full of administrative expense claims—as set forth below, the Administrative Claim Bar Dates were critical to determine the Reorganized Debtors' budget for paying these claims.

51. The Bureau's arguments notwithstanding, the relief sought in the Motion would significantly prejudice the Reorganized Debtors. First, the Administrative Claim Bar Dates played an integral role in the Debtors' emergence from chapter 11. As the Court previously explained, the Administrative Claim Bar Dates "served a very important and practical purpose in this case" because "the determination of allowable administrative claims was an important factor in the court's consideration whether to approve confirmation of the [Modified Plan]" and was also an important factor in determining whether certain stakeholders would provide the support and funding required to consummate the Modified Plan. (Hr'g Tr. 55:15-56:2, Aug. 27, 2010.) Thus, permitting the Bureau to pursue the Administrative Claim would

substantially prejudice the Reorganized Debtors and their stakeholders by allowing the Bureau to pursue significant unliquidated claims that, due to the Bureau's failure to assert such claims in a timely manner, were not contemplated at the time the Modified Plan was negotiated and confirmed, and would reduce the liquidity that is necessary for the Reorganized Debtors to carry out their obligations under the Modified Plan.

52. Second, allowing untimely claims at this time may open the floodgates to any potential claimant who failed to file an administrative expense claim on or before the applicable Administrative Claim Bar Dates. Courts often have recognized the danger of opening the floodgates to potential claimants. See, e.g., In re Enron Corp., 419 F.3d at 132 n. 2 ("courts in this and other Circuits regularly cite the potential 'flood' of similar claims as a basis for rejecting late-filed claims"); In re Kmart Corp., 381 F.3d 709, 714 (7th Cir. 2004) (noting that if court allowed all similar late-filed claims, "Kmart could easily find itself faced with a mountain of such claims"); In re Enron Creditors Recovery Corp., 370 B.R. 90, 103 (Bankr. S.D.N.Y. 2007) ("It can be presumed in a case of this size with tens of thousands of filed claims, there are other similarly-situated potential claimants. . . . Any deluge of motions seeking similar relief would prejudice the Debtors' reorganization process." (citation omitted)); In re Dana Corp., 2007 WL 1577763, at *6 ("the floodgates argument is a viable one"). Accordingly, the Bureau's argument that their claim does not prejudice the Reorganized Debtors because of "its insignificant nature in relation to other claims against the estates" (Motion ¶ 47) is without merit.

53. The Administrative Claim Bar Dates were established to identify administrative expense claims that would be paid pursuant to the terms of the Modified Plan. Allowing the Bureau to prevail on the Motion may inspire many other similarly situated potential claimants to file similar motions. Any potential claimant who, by its own error, failed to file a timely administrative expense claim may seek to follow the Bureau's lead. Accordingly,

establishing a precedent for allowing untimely claims without a compelling justification would greatly prejudice the Reorganized Debtors' ability to carry out their obligations under the Modified Plan.

(iii) Length of the Delay

54. Finally, the length of the delay also favors denying the relief sought in the Motion. The Bureau knew that workers' compensation assessments would continue to accrue after the Debtors emerged from chapter 11 and, therefore, had the information necessary to file a contingent or estimated claim well in advance of the Administrative Claim Bar Dates. Nevertheless, the Bureau waited more than eighteen months after the Initial Administrative Claim Bar Date and more than fourteen months after the Final Administrative Claim Bar Date before seeking to file the Administrative Claim.

55. The Second Circuit has adopted a "strict" standard in the area of excusable neglect, Asbestos Personal Injury Plaintiffs v. Travelers Indem. Co. (In re Johns-Manville Corp.), 476 F.3d 118, 120 (2d Cir. 2007). Although the Bureau waited nearly a year and a half to file its late claim, the Bureau characterizes its delay in seeking to file the Administrative Claim as "extremely short" by virtue of the Bureau having filed the Motion thirty-nine days after the Court ruled that the Proof of Claim was disallowed. (Motion ¶ 48.) But the length of the Bureau's delay is measured from the Administrative Claim Bar Dates and, as noted above, the Bureau's delay was significantly longer than thirty-nine days. Courts considering excusable neglect in this jurisdiction have characterized delays of six months as "substantial." See In re Dana Corp., 2007 WL 1577763, at *5 (citing In re Enron, 419 F.3d at 125 (delay of more than six months after bar date was "substantial")). Indeed, a delay of only one day may be inexcusable. Singer, 2002 WL 10452, at *3 ("Although the Union's miscalculation as to the appropriate appeals deadline was in good faith and resulted in only one day's delay, not every

minor error can or should be excused. Compliance with deadlines is not a game of horseshoes; close doesn't count."). Accordingly, this factor also weighs in favor of the Reorganized Debtors and further supports denying the Motion.

Conclusion

56. The Bureau has failed to provide any evidence of circumstances justifying the extraordinary relief it seeks and has not met its burden for establishing an informal claim, a post-bar date amendment to the Proof of Claim, or excusable neglect. The Motion should, therefore, be denied.

WHEREFORE the Reorganized Debtors respectfully request that this Court enter an order (a) denying the Motion, and (b) granting them such other and further relief as is just.

Dated: New York, New York
February 10, 2011

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP

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- and -

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(212) 735-3000

Attorneys for DPH Holdings Corp., et al.,
Reorganized Debtors

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----	x	
	:	
In re	:	Chapter 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----	x	

AFFIDAVIT OF SERVICE

I, Evan Gershbein, being duly sworn according to law, depose and say that I am employed by Kurtzman Carson Consultants LLC, the Court appointed claims and noticing agent for the Debtors in the above-captioned cases. I submit this Affidavit in connection with the service of the solicitation materials for the **First Amended Joint Plan of Reorganization of Delphi Corporation and Certain Affiliates, Debtors and Debtors-In-Possession (As Modified)** [Docket No. 17030] ("the Plan").

On December 1, 2005, the Court signed and entered an Order Pursuant to 28 U.S.C. § 156(c) Authorizing Retention and Appointment of Kurtzman Carson Consultants LLC as Claims, Noticing and Balloting Agent for Clerk of Bankruptcy Court [Docket No. 1374] designating KCC as the official Balloting Agent.

KCC is charged with the duty of printing and distributing Solicitation Packages to creditors and other interested parties pursuant to the instructions set forth in the **Order (A)(I) Approving Modifications to Debtors' First Amended Plan of Reorganization (as Modified) and Related Disclosures and Voting Procedures and (II) Setting Final Hearing Date to Consider Modifications to Confirmed First Amended Plan of Reorganization and (B) Setting Administrative Expense Claims Bar Date and Alternative Transaction Hearing Date ("Modification Procedures Order")** [Docket No. 17032] ("Modification Procedures Order") as entered by the Court on June 16, 2009.

The various solicitation materials consist of the following documents:

- 1) Ballot for Accepting or Rejecting First Amended Joint Plan of Reorganization of Delphi Corporation and Certain Affiliates, Debtors and Debtors-In-Possession (As Modified) (Class A Secured Claims) ("Class A Ballot") (attached hereto as Exhibit A);
- 2) Ballot for Accepting or Rejecting First Amended Joint Plan of Reorganization of Delphi Corporation and Certain Affiliates, Debtors and Debtors-In-Possession (As Modified) (Class C-1 General Unsecured Claims) ("Class C-1 Ballot") (attached hereto as Exhibit B);



- 3) Ballot for Accepting or Rejecting First Amended Joint Plan of Reorganization of Delphi Corporation and Certain Affiliates, Debtors and Debtors-In-Possession (As Modified) (Class C-2 Pension Benefit Guaranty Corporation Claims) ("Class C-2 Ballot") (attached hereto as Exhibit C);
- 4) Ballot for Accepting or Rejecting First Amended Joint Plan of Reorganization of Delphi Corporation and Certain Affiliates, Debtors and Debtors-In-Possession (As Modified) (Class D General Motors Corporation Claim) ("Class D Ballot") (attached hereto as Exhibit D);
- 5) Notice of (1) Approval of Supplement; (2) Hearing on Modifications to Plan; (3) Deadline and Procedures for Filing Objections to Modifications of Plan; (4) Deadline and Procedures for Temporary Allowance of Certain Claims for Voting Purposes; (5) Treatment of Certain Unliquidated, Contingent, or Disputed Claims for Noticing, Voting, and Distribution Purposes; (6) Record Date; (7) Voting Deadline for Receipt of Ballots; and (9) Proposed Releases, Exculpation, and Injunction in Modified Plan ("Final Modification Hearing Notice") (attached hereto as Exhibit E);
- 6) a letter from the Delphi Corporation Official Committee of Unsecured Creditors ("Creditors' Committee Letter") (attached hereto as Exhibit F);
- 7) First Amended Disclosure Statement Supplement with Respect to First Amended Plan of Reorganization (As Modified), Modification Procedures Order and December 10, 2007 Solicitation Procedures Order, in CD-ROM format ("CD-ROM")
- 8) Notice of Non-Voting Status with Respect to Certain Claims and Interests ("Notice of Non-Voting Status") (attached hereto as Exhibit G);
- 9) Notice to Unimpaired Creditors of (I) Filing of Proposed Modified Plan of Reorganization, (II) Treatment of Claims Under Modified Plan, (III) Hearing on Approval of Modified Plan, and (IV) Deadline and Procedures for Filing Objections Thereto ("Unimpaired Notice") (attached hereto as Exhibit H);
- 10) a memorandum from Kurtzman Carson Consultants to additional notice parties of ballot recipients ("Ballot Notice Party Memo") (attached hereto as Exhibit I);
- 11) Notice of Bar Date for Filing Proofs of Administrative Expense ("Administrative Bar Date Notice") (attached hereto as Exhibit J); and
- 12) Administrative Expense Claim Form ("Administrative Expense Claim Form") (attached hereto as Exhibit K).

On or before June 20, 2009, I caused to be served a personalized Class A Ballot, Final Modification Hearing Notice, Creditors' Committee Letter, CD-ROM, Administrative Bar Date Notice, Administrative Expense Claim Form and a pre-addressed, postage pre-paid return envelope upon the parties listed on Exhibit L via postage pre-paid U.S. mail.

On or before June 20, 2009, I caused to be served a personalized Class C-1 Ballot, Final Modification Hearing Notice, Creditors' Committee Letter, CD-ROM, Administrative Bar Date Notice, Administrative Expense Claim Form and a pre-addressed, postage pre-paid return envelope upon the parties listed on Exhibit M via postage pre-paid U.S. mail.

On or before June 20, 2009, I caused to be served a personalized Class C-2 Ballot, Final Modification Hearing Notice, Creditors' Committee Letter, CD-ROM, Administrative Bar Date Notice, Administrative Expense Claim Form and a pre-addressed, postage pre-paid return envelope upon the party listed on Exhibit N via postage pre-paid U.S. mail.

On or before June 20, 2009, I caused to be served a personalized Class D Ballot, Final Modification Hearing Notice, Creditors' Committee Letter, CD-ROM, Administrative Bar Date Notice, Administrative Expense Claim Form and a pre-addressed, postage pre-paid return envelope upon the party listed on Exhibit O via postage pre-paid U.S. mail.

On or before June 20, 2009, I caused to be served the Final Modification Hearing Notice, Creditors' Committee Letter, CD-ROM, Administrative Bar Date Notice and Administrative Expense Claim Form upon the parties listed on Exhibit P via postage pre-paid U.S. mail.

On or before June 20, 2009, I caused to be served the Final Modification Hearing Notice, Notice of Non-Voting Status, Administrative Bar Date Notice and Administrative Expense Claim Form upon the parties listed on Exhibit Q via postage pre-paid U.S. mail.

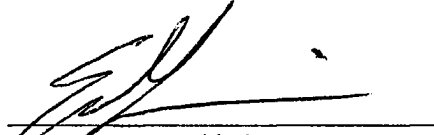
On or before June 20, 2009, I caused to be served the Final Modification Hearing Notice, Creditors' Committee Letter, CD-ROM, Unimpaired Notice, Administrative Bar Date Notice and Administrative Expense Claim Form upon the parties listed on Exhibit R via postage pre-paid U.S. mail.

On or before June 20, 2009, I caused to be served the Final Modification Hearing Notice, Creditors' Committee Letter, CD-ROM, Notice of Non-Voting Status, Administrative Bar Date Notice and Administrative Expense Claim Form upon the parties listed on Exhibit S via postage pre-paid U.S. mail.

On or before June 20, 2009, I caused to be served the Final Modification Hearing Notice, Creditors' Committee Letter, CD-ROM, Ballot Notice Party Memo, Administrative Bar Date Notice and Administrative Expense Claim Form upon the parties listed on Exhibit T via postage pre-paid U.S. mail.

On or before June 20, 2009, I caused to be served the Final Modification Hearing Notice, Administrative Bar Date Notice and Administrative Expense Claim Form upon the parties listed on Exhibit U via postage pre-paid U.S. mail.

Dated: June 23, 2009


Evan Gershbein

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 23rd day of June, 2009, by Evan Gershbein, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature



Commission Expires: 10-1-09

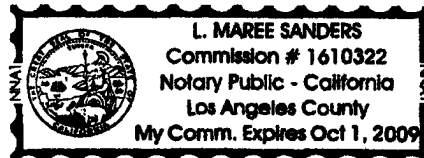


EXHIBIT J

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
In re : Chapter 11
:
DELPHI CORPORATION, et al., : Case No. 05-44481 (RDD)
:
Debtors. : (Jointly Administered)
:
----- x

NOTICE OF BAR DATE FOR FILING PROOFS OF ADMINISTRATIVE EXPENSE

PLEASE TAKE NOTICE that on June 16, 2009, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") entered an order (the "Modification Procedures Order") (Docket No. 17032), which among other things, established **July 15, 2009** (the "Administrative Expense Bar Date") as the last date to file proof of administrative expense (each, an "Administrative Expense Claim Form") for the purpose of asserting administrative expense claims ("Administrative Expense Claims" or "Claims"), against Delphi Corporation ("Delphi") and its affiliated debtors and debtors-in-possession (the "Debtors" or "Company"). The Administrative Expense Bar Date and the procedure set out below for filing proofs of administrative expense with respect to Claims apply to all alleged postpetition Claims against the Debtors that arose, accrued, or that were incurred on or before **June 1, 2009**.

PLEASE TAKE FURTHER NOTICE that the Modification Procedures Order requires all parties to file an Administrative Expense Claim Form with Kurtzman Carson Consultants LLC ("KCC"), the claims, noticing, and solicitation agent in these cases, **so that such Administrative Expense Claim Form is received on or before 5:00 p.m., prevailing Eastern time, on the Administrative Expense Bar Date.**

WHO SHOULD FILE AN ADMINISTRATIVE EXPENSE CLAIM FORM

You must file an Administrative Expense Claim Form if you believe that you are entitled to an Administrative Expense Claim as described in 11 U.S.C. § 503, except as provided below.

You do not need to file an Administrative Expense Claim Form for (i) any claim for postpetition goods and services delivered to the Debtors prior to June 1, 2009 that are not yet due and payable pursuant to the applicable contract terms, (ii) employee claims arising prior to June 1, 2009 for wages, salary, and other benefits arising in the ordinary course of business that are not yet due and payable; (iii) any claim for which the party has already properly filed an Administrative Expense Claim Form or a proof of claim form with the Court which has not been expunged by order of the Court and provided that such proof of claim clearly and unequivocally sets forth that such claim is made for an administrative expense priority; (iv) any claim for fees and/or reimbursement of expenses by a professional employed in these chapter 11 cases accruing through January 25, 2008, to the extent that such claim is subject to this Court's Interim

Compensation Orders;¹ or (v) any claim asserted by any Debtor or any direct or indirect subsidiary of any of the Debtors in which the Debtors in the aggregate directly or indirectly own, control or hold with power to vote, 50% or more of the outstanding voting securities of such subsidiary.

TIME AND PLACE FOR FILING ADMINISTRATIVE EXPENSE CLAIMS

A signed original of any Administrative Expense Claim Form, together with accompanying documentation, must be delivered to Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, CA 90245, so as to be received no later than 5:00 p.m., prevailing Eastern time, on the Administrative Expense Bar Date. Claims may be submitted in person or by courier service, hand delivery or mail addressed to KCC at the foregoing address. Any Claim submitted by facsimile, e-mail, or by other electronic means will not be accepted and will not be deemed filed until such Claim is submitted by one of the methods described in the preceding sentence. Claims will be deemed filed only when actually received by KCC. If you wish to receive acknowledgment of KCC's receipt of your Claim, you must also submit a copy of your original Claim and a self-addressed, stamped envelope.

CONSEQUENCES OF FAILURE TO TIMELY SUBMIT ADMINISTRATIVE EXPENSE CLAIM FORM

ANY PARTY THAT IS REQUIRED BUT FAILS TO FILE AN ADMINISTRATIVE EXPENSE CLAIM FORM IN ACCORDANCE WITH THIS NOTICE ON OR BEFORE THE ADMINISTRATIVE EXPENSE BAR DATE SHALL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH CLAIM AGAINST THE DEBTORS AND REORGANIZED DEBTORS, AS APPLICABLE, AND THEIR PROPERTY SHALL BE FOREVER DISCHARGED FROM ANY AND ALL INDEBTEDNESS, LIABILITY, OR OBLIGATION WITH RESPECT TO SUCH CLAIM.

¹ See Order Under 11 U.S.C. § 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, dated November 4, 2005 (Docket No. 869) (the "Interim Compensation Order"); Supplemental Order Under 11 U.S.C. § 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, dated March 8, 2006 (Docket No. 2747) (the "Supplemental Compensation Order"); Second Supplemental Order Under 11 U.S.C. Section 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, dated March 28, 2006 (Docket No. 2986) (the "Second Supplemental Interim Compensation Order"); and Third Supplemental Order Under 11 U.S.C. § 331 Establishing Procedures For Interim Compensation And Reimbursement Of Expenses Of Professionals, dated May 5, 2006 (Docket No. 3630) (the "Third Supplemental Interim Compensation Order"); Fourth Supplemental Order Under 11 U.S.C. Section 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, dated July 13, 2006 (Docket No. 4545) (the "Fourth Supplemental Interim Compensation Order"); Fifth Supplemental Order Under 11 U.S.C. Section 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses, dated October 13, 2006 (Docket No. 5310) (the "Fifth Supplemental Interim Compensation Order"); Sixth Supplemental Order Under 11 U.S.C. Section 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, dated December 12, 2006 (Docket No. 6145) (the "Sixth Supplemental Interim Compensation Order"); and the Seventh Supplemental Order Under 11 U.S.C. §331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, dated January 28, 2008 (Docket No. 12367) (together with the Interim Compensation Order, the Supplemental Compensation Order, the Second Supplemental Interim Compensation Order, the Third Supplemental Interim Compensation Order, the Fourth Supplemental Interim Compensation Order, the Fifth Supplemental Interim Compensation Order, and the Sixth Interim Compensation Order, the "Interim Compensation Orders").

PLEASE TAKE FURTHER NOTICE that all pleadings and orders of the Bankruptcy Court are publicly available along with the docket and other case information by accessing the Delphi Legal Information Website at www.delphidocket.com and may also be obtained, upon reasonable written request, from the Creditor Voting Agent, Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, California 90245, Att'n: Delphi Corporation, et al.

Delphi Legal Information Hotline:
Toll Free: (800) 718-5305
International: (248) 813-2698

Delphi Legal Information Website:
<http://www.delphidocket.com>

Dated: New York, New York
June 16, 2009

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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Kayalyn A. Marafioti
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Four Times Square
New York, New York 10036

Attorneys for Delphi Corporation, et al., Debtors and Debtors-in-Possession

Delphi Corporation
Class K (Other Priority Claims) Service List

Name	Creditor/Notice Name	Address1	Address2	Address3	City	State	Zip	Country
Mutton Connie L		780 N Se Bouteil			Essexville	MI	48732-0000	
Nash Richard P		661 Country Lane			Frankenmuth	MI	48734	
Nason William E		O 4950 Boyne City Rd			Boyne City	MI	49712-0000	
Naylor Craig G		Group VP Electronic & Communication Technologies	E I du Pont de Nemours & Company	Barly Mill Plz 30 1168 4417 Lancaster Pike	Wilmington	DE	19805	
Neal Naomi		261 Barbara Ln			Saginaw	MI	48601-9469	
Neal Naomi		261 Barbara Ln			Saginaw	MI	48601-9469	
Neblo Debra S		8802 Heather Ln			Onsted	MI	49265	
Nelson Evelyn M		425 W Flint Park Blvd			Flint	MI	48505	
Nething Roger L		124 Dandridge Ave NW			Palm Bay	FL	32907	
New Jersey Self Insurers Guaranty Association	c/o Jeffrey Bernstein Esq	McElroy Deutsch Mulvaney & Carpenter LLP	Three Gateway Cir	100 Mulberry St	Newark	NJ	07102-4079	
Newton Jr James David		5555 Widgeon Ct			Dayton	OH	45424	
Nez Lupita		PO Box 830			Fort Defiance	AZ	86504	
Nicholson Warren B		112 Venetian Way Sw			Pataskala	OH	43062-9147	
Nieman James L		5784 Carter Rd			Freeland	MI	48623-0000	
Nieman James L		5784 Carter Rd			Freeland	MI	48623-0000	
Noel Ellen C		3538 Christy Way W			Saginaw	MI	48603-7226	
Noel Morgan Hubert		7700 Nardo Goodman			El Paso	TX	79912	
Oaks Mary A		27484 Joann Dr			Bonita Springs	FL	34135-7143	
Obryan Everett E		1609 Martin St			Flatwoods	KY	41139-1261	
Offenbacher Lon		538 Springview Dr			Rochester	MI	48307	
Ohio Bureau of Workers Compensation	Law Section Bankruptcy Unit	30 W Spring St	PO Box 15567		Columbus	OH	43215-0567	
Ohio Bureau of Workers Compensation	Law Section Bankruptcy Unit	30 W Spring St	PO Box 15567		Columbus	OH	43215-0567	
Ohio Environmental Protection Agency	Michelle T Sutter	Ohio Attorney General	Environmental Enforcement Section	30 E Broad St 25th Fl	Columbus	OH	43215-3400	
Ohio Environmental Protection Agency	Michelle T Sutter	Ohio Attorney General	Environmental Enforcement Section	30 E Broad St 25th Fl	Columbus	OH	43215-3400	
Ohio Environmental Protection Agency	Michelle T Sutter	Ohio Attorney General	Environmental Enforcement Section	30 E Broad St 25th Fl	Columbus	OH	43215-3400	
Oliah Sheila M		G 3100 Miller Rd Apt 17 A			Flint	MI	48507-0000	
Oliah Sheila M		G 3100 Miller Rd Apt 17 A			Flint	MI	48507-0000	
Offano Ross A		3023 Tyler Rd			Sanborn	NY	14132-9444	
Onell Darrel W		2131 Bayou Dr S			Ruskin	FL	33570	
Opie John D		5725 Delphi Dr			Troy	MI	48098-2815	
Ortega Maria	c/o Delphi Corporation	5920 Fraser Rd			Bay City	MI	48706-9729	
Ortega Maria		5920 Fraser Rd			Bay City	MI	48706-9729	
Ostash Robert S		2436 W German Rd			Bay City	MI	48708-9652	
Ostash Robert S		2436 W German Rd			Bay City	MI	48708-9652	
Otto Brad K		1080 Kenmoor SE			Grand Rapids	MI	49546	
Oyefeso Samuel O		PO Box 1253			Alief	TX	77411-1253	
Palmer Michael A		1973 Homepath Ct			Centerville	OH	45459-6971	
Paprocki Jeffrey		4265 Emu Dr			Pinckney	MI	48169	
Paradise Gail A		4130 Bridlegate Way			Dayton	OH	45424-8000	
Pariseau Leona R		408 W Page St			Rose City	MI	48654-9592	
Pariseau Letitia S		14624 Windemere St			Southgate	MI	48195-3709	
Pariseau Richard J		388 Gifford Ranch Trail			Rose City	MI	48654-9594	
Parisi Henry		6617 Isla Del Rey Dr			El Paso	TX	79912	
Parker Julie		719 Janice St			Holly	MI	48442-1266	

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
In re : Chapter 11
DELPHI CORPORATION, et al., : Case No. 05-44481 (RDD)
Debtors. : (Jointly Administered)
----- X

AFFIDAVIT OF SERVICE

I, Evan Gershbein, being duly sworn according to law, depose and say that I am employed by Kurtzman Carson Consultants LLC, the Court appointed claims and noticing agent for the Debtors in the above-captioned cases.

On or before October 9, 2009, I caused to be served the document listed below upon the parties listed on Exhibit A hereto via postage pre-paid U.S. mail:

Notice of (A) Order Approving Modifications to First Amended Joint Plan of Reorganization of Delphi Corporation and Certain Affiliates, Debtors and Debtors-in-Possession and (B) Occurrence of Effective Date (Docket No. 18958)

On or before October 13, 2009, I caused to be served the appropriate number of copies of the document listed below (i) upon the service list attached hereto as Exhibit B, for subsequent distribution to beneficial holders of Common Stock, CUSIP 172737 10 8; 6 ½% Notes due 2009, CUSIP 247126 AB 1; 7 1/8% Notes due 2029, CUSIP 247126 AC 9; 6.55% Notes due 2006, CUSIP 247126 AD 7; 6.50% Notes due 2013, CUSIP 247126 AE 5; 8 ¼% Adjustable Rate Subordinated Note due 2033, CUSIP 247126 AF 2; and 6.197% Junior Subordinated Note due 2033, CUSIP 247126 AG 0, via Overnight mail and hand delivery; (ii) upon the parties set forth on Exhibit C via postage pre-paid U.S. Mail; (iii) upon the registered holders of Common Stock listed on Exhibit D, provided by Computershare as transfer agent, via postage pre-paid U.S. Mail; and (iv) upon the service list attached hereto as Exhibit E via Electronic mail.

Notice of (A) Order Approving Modifications to First Amended Joint Plan of Reorganization of Delphi Corporation and Certain Affiliates, Debtors and Debtors-in-Possession and (B) Occurrence of Effective Date (Docket No. 18958)



054448109101500000000001

Dated: October 14, 2009

/s/ Evan Gershbein

Evan Gershbein

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 14th day of October, 2009, by
Evan Gershbein, proved to me on the basis of satisfactory evidence to be the person who
appeared before me.

Signature: /s/ Shannon J. Spencer

Commission Expires: 6/20/10

CreditorName	CreditorNoticeName	Address1	Address2	Address3	Address4	City	State	Zip	Country
OHARA RUBERG TAYLOR SLOAN AND SERGENT		PO BOX 17411				COVINGTON	KY	41017-0411	
OHARA SERVICE INC		239 N RIVER RD				MT CLEMENS	MI	48043	
OHARA SERVICE INC		ADD CHG LTR 7 01 CSP	239 N RIVER RD			MT CLEMENS	MI	48043	
OHARE J		96 BROWNMOOR LN	CROSBY			LIVERPOOL		L23 0TF	UNITED KINGDOM
OHARE MARIE		2100 CANDLESTICK				MIDLAND	MI	48640	
OHARE, MARIE D		2100 CANDLESTICK				MIDLAND	MI	48640	
OHAROLD BARBARA H		1635 HART RD				LEBANON	OH	45036-9621	
OHARRA HARRY		3769 ADELL RD				COLUMBUS	OH	43228	
OHASHI TECHNICA INC		2 3 1 NISHISHINJUKU				SHINJUKU KU	13	1600023	JP
OHASHI TECHNICA USA INC		111 BURRER DR	AD CHG PER LTR 05 16 05 GJ			SUNBURY	OH	43074	
OHASHI TECHNICA USA INC		111 BURRER DR				SUNBURY	OH	43074	
OHASHI TECHNICA USA INC		PO BOX 951521				CLEVELAND	OH	44193	
OHAUS CORP		19A CHAPIN RD				PINE BROOK	NJ	07058	
OHAUS CORP		290 HANOVER RD				FLORHAM PK	NJ	07932	
OHAUS CORP		PO BOX 18175				NEWARK	NJ	07191	
OHAUS CORPORATION		19 CHAPIN RD NO A				PINE BROOK	NJ	07058-9385	
OHAVER TAMMY		8417 AIRLANE AVE				LOS ANGELES	CA	90045-3020	
OHAVER, TAMMY G		8417 AIRLANE AVE				LOS ANGELES	CA	90045-3020	
OHD LLC		OCCUPATIONAL HEALTH DYNAMICS	2635 VALLEYDALE RD STE 100			BIRMINGHAM	AL	35244	
OHE INDUSTRIES LLC	ACCOUNTS PAYABLE	4480 8TH AVE				MARION	IA	52302	
OHERRON ROBERT		472 MAYFLOWER				LINCOLN PK	MI	48146	
OHIO & MICHIGAN PAPER CO		PO BOX 621				TOLEDO	OH	43694	
OHIO & MICHIGAN PAPER CO		PO BOX 621				TOLEDO	OH	43697	
OHIO & MICHIGAN PAPER CO THE		AMPOINT COMPLEX 350 4TH ST				PERRYSBURG	OH	43551	
OHIO & MICHIGAN PAPER CO THE		PO BOX 621				TOLEDO	OH	43694-0621	
OHIO ACADEMY OF SCIENCE YOUNGS TOWN STATE UNIVERSITY DEP ARTS		1 UNVSTY PLZ DEBARTOLE HALL RM 104				YOUNGSTOWN	OH	44555	
OHIO AEROSPACE INSTITUTE		22800 CEDAR POINT RD				BROOK PK	OH	44142	
OHIO AEROSPACE INSTITUTE		OAI	22800 CEDAR POINT RD			CLEVELAND	OH	44142	
OHIO AFL CIO		395 EAST BROAD ST	STE 300			COLUMBUS	OH	43215	
OHIO ALLIANCE FOR CIVIL		JUSTICE ADD CHG 10 97	OHIO CHAMBER OF COMMERCE	230 E TOWN ST		COLUMBUS	OH	43215	
OHIO ALLIANCE FOR CIVIL JUSTICE		OHIO CHAMBER OF COMMERCE	230 E TOWN ST			COLUMBUS	OH	43215	
OHIO ASPHALT MAINTENANCE INC		3401 VENICE RD				SANDUSKY	OH	44870	
OHIO ASPHALT MAINTENANCE INC		PO BOX 1045				SANDUSKY	OH	44871-1045	
OHIO BARBRI BAR REVIEW		1370 ONTARIO ST	STE 410			CLEVELAND	OH	44113	
OHIO BEAM INC		8963 DARROW RD				TWINSBURG	OH	44087	
OHIO BELTING & TRANSMISSION		CO	300 N WESTWOOD			TOLEDO	OH	43697	
OHIO BELTING AND TRANSMISSION CO		PO BOX 404				TOLEDO	OH	43697	
OHIO BOARD OF NURSING		PO BOX 182869				COLUMBUS	OH	43218-2869	
OHIO BRAKE & CLUTCH CORP		1460 WOLF CREEK TRAIL				SHARON CTR	OH	44274-0325	
OHIO BRAKE & CLUTCH CORP		OBC	1460 WOLFCREEK TRL			SHARON CTR	OH	44274	
OHIO BRAKE AND CLUTCH CORP		PO BOX 325				SHARON CTR	OH	44274-0325	
OHIO BUILDING RESTORATION INC		OBR	912 MILL ST			TOLEDO	OH	43609	
OHIO BUREAU OF WORKERS COMPENSATION	LAW SECTION BANKRUPTCY UNIT	30 W SPRING ST	PO BOX 15567			COLUMBUS	OH	43215-0567	
OHIO BUSINESS ROUNDTABLE		L 2481	PO BOX 600001			COLUMBUS	OH	43260-2481	
OHIO BUSINESS WEEK FOUNDATION		1572 WEST FIRST AVE	AD CHG PER AFC 02 24 04 AM			COLUMBUS	OH	43212	
OHIO BUSINESS WEEK FOUNDATION		1572 WEST FIRST AVE				COLUMBUS	OH	43212	
OHIO C S P C		PO BOX 182394				COLUMBUS	OH	43218	
OHIO CAMSHAFT INC		8333 BOYLE PKWY				TWINSBURG	OH	44087	
OHIO CAMSHAFT INC		PO BOX 26304				AKRON	OH	44319-0003	
OHIO CARBON BLANK		38403 PELTON RD				WILLOUGHBY	OH	44094-7721	
OHIO CARBON BLANK INC		38403 PELTON RD				WILLOUGHBY	OH	44094-7721	
OHIO CARBON BLANK INC		PO BOX 71 4093				COLUMBUS	OH	43271-4093	
OHIO CAT		3993 E ROYALTON RD				CLEVELAND	OH	44147	
OHIO CAT		DEPT 495				COLUMBUS	OH	43265	
OHIO CENTRAL RAILROAD INC		ADD CHG 11 04 02 CP	PO BOX 1180			COSHOCTON	OH	43812	
OHIO CENTRAL RAILROAD INC		PO BOX 1180				COSHOCTON	OH	43812	
OHIO CHILD SUPPORT PAYMENT		CENTER	PO BOX 182394			COLUMBUS	OH	43218-2394	
OHIO CHILD SUPPORT PAYMENT		CENTER	PO BOX 182394			COLUMBUS	OH	43218	
OHIO CHILD SUPPORT PAYMNT CENTRAL		PO BOX 182394				COLUMBUS	OH	43218	
OHIO CHILD SUPPORT PMT CENTER		PO BOX 182394				COLUMBUS	OH	43218-2394	
OHIO CINCINNATI INCOME TAX		BUREAU	PO BOX 640770			CINCINNATI	OH	45264-0770	
OHIO CITY OF DAYTON		DEPARTMENT OF FINANCE	DIV OF REVENUE AND TAXATION	PO BOX 2806		DAYTON	OH	45401-2806	
OHIO CITY OF PARMA		DIVISION OF TAXATION	PO BOX 94734			CLEVELAND	OH	44101-4734	
OHIO COLLEGE OF PODIATRIC		MEDICINE	10515 CARNEGIE AVE	BUSINESS OFFICE		CLEVELAND	OH	44106	
OHIO COMMERCE CENTER		5232 TOD AVE SW UNIT 11				WARREN	OH	44481	
OHIO CONCRETE SAWING & DRILLIN		OHIO CONCRETE SAWING & DRILLIN	314 CONOVER DR			FRANKLIN	OH	45005	
OHIO CONCRETE SAWING AND		DRILLING INC	8534 W CENTRAL AVE			SYLVANIA	OH	43660	
OHIO CONTAINER SERVICE LLC		3091 ROCKEFELLER AVE				CLEVELAND	OH	44115	
OHIO COUNTING SCALE SOUTH INC		4816 PETER PL				CINCINNATI	OH	45246	
OHIO CSPC		PO BOX 182394				COLUMBUS	OH	182394	
OHIO CSPC		PO BOX 182394				COLUMBUS	OH	43218	
OHIO DECORATIVE PRODUCTS INC		220 S ELIZABETH ST	PO BOX 126			SPENCERVILLE	OH	45887-0126	
OHIO DECORATIVE PRODUCTS INC		220 S ELIZABETH ST				SPENCERVILLE	OH	45887-131	
OHIO DECORATIVE PRODUCTS INC		PO BOX 126				SPENCERVILLE	OH	45887-0126	
OHIO DEPARTMENT OF		JOB & FAMILY SERVICES	PO BOX 182404			COLUMBUS	OH	43218-2404	
OHIO DEPARTMENT OF COMMERCE		DIVISION OF UNCLAIMED FUNDS	PO BOX 18305			COLUMBUS	OH	43218	
OHIO DEPARTMENT OF COMMERCE		DIV OF INDUSTRIAL COMPLIANCE	6606 TUSSING RD	ADD CHG 11 19 04 AH		REYNOLDSBURG	OH	43068-9009	
OHIO DEPARTMENT OF COMMERCE		INDUSTRIAL COMPLIANCE DIVISION	6606 TUSSING RD			REYNOLDSBURG	OH	43068	
OHIO DEPARTMENT OF COMMERCE DIV OF INDUSTRIAL COMPLIANCE		PO BOX 4009				REYNOLDSBURG	OH	43068-9009	
OHIO DEPARTMENT OF COMMERCE DIVISION OF STATE FIRE MARSHAL	ROBERT R RIELAGE	STATE FIRE MARSHALL	OHIO FIRE ACADEMY	8895 EAST MAIN ST		REYNOLDSBURG	OH	43068	
OHIO DEPARTMENT OF DEVELOPMENT		373 S HIGH ST 25TH FL				COLUMBUS	OH	43215	

EXHIBIT E

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
155 North Wacker Drive
Chicago, Illinois 60606
John Wm. Butler, Jr.
John K. Lyons
Ron E. Meisler

- and -

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Four Times Square
New York, New York 10036

Attorneys for DPH Holdings Corp., et al.,
Reorganized Debtors

DPH Holdings Corp. Legal Information Hotline:
Toll Free: (800) 718-5305
International: (248) 813-2698

DPH Holdings Corp. Legal Information Website:
<http://www.dphholdingsdocket.com>

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----	x	
	:	
In re	:	Chapter 11
	:	
DPH HOLDINGS CORP., <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
	:	(Jointly Administered)
Reorganized Debtors.	:	
	:	
-----	x	

NOTICE OF ADJOURNMENT OF CLAIMS OBJECTION HEARING WITH
RESPECT TO DEBTORS' OBJECTION TO PROOF OF CLAIM NUMBER 1301
FILED BY OHIO BUREAU OF WORKERS' COMPENSATION

("NOTICE OF ADJOURNMENT OF CLAIMS OBJECTION HEARING AS TO
PROOF OF CLAIM NUMBER 1301")

PLEASE TAKE NOTICE that on June 22, 2009, Delphi Corporation and certain of its subsidiaries and affiliates, former debtors and debtors-in-possession in the above-captioned cases (f/k/a In re Delphi Corporation, et al.) (collectively, the "Debtors"), predecessors of DPH Holdings Corp. and its affiliated reorganized debtors (the "Reorganized Debtors") objected to proof of claim number 1301 (the "Proof of Claim") filed by the Ohio Bureau of Workers' Compensation pursuant to the Debtors' Thirty-Fourth Omnibus Objection Pursuant To 11. U.S.C. § 502(b) And Fed. R. Bankr. P. 3007 To (I) Expunge (A) Certain Pension And OPEB Claims, (B) Certain Individual Workers' Compensation Claims, (C) Certain Duplicate And/Or Amended Individual Workers' Compensation Claims, (D) Certain Untimely Individual Workers' Compensation Claims, (E) A Secured Books And Records Claim, And (F) Certain Untimely Claims, (II) Modify Certain (A) Wage And Benefit Claims, (B) State Workers' Compensation Claims, And (C) Individual Workers' Compensation Claims Asserting Priority, (III) Provisionally Disallow Certain Union Claims, And (IV) Modify And Allow Certain Settled Claims (Docket No. 17182).

PLEASE TAKE FURTHER NOTICE that on October 6, 2009, the Debtors substantially consummated the First Amended Joint Plan Of Reorganization Of Delphi Corporation And Certain Affiliates, Debtors And Debtors-In-Possession, As Modified (the "Modified Plan"), which had been approved by the United States Bankruptcy Court for the Southern District of New York pursuant to an order entered on July 30, 2009 (Docket No. 18707), and emerged from chapter 11 as the Reorganized Debtors.

PLEASE TAKE FURTHER NOTICE that Article 9.6(a) of the Modified Plan provides that "[t]he Reorganized Debtors shall retain responsibility for administering, disputing,

objecting to, compromising, or otherwise resolving all Claims against, and Interests in, the Debtors and making distributions (if any) with respect to all Claims and Interests."

PLEASE TAKE FURTHER NOTICE that on March 16, 2010, the Reorganized Debtors filed the Notice Of Claims Objection Hearing With Respect To Debtors' Objection To Proofs Of Claim Nos. 1294 And 1301 (Ohio Bureau Of Workers' Compensation) (Docket No. 19687), scheduling an evidentiary hearing (the "Claims Objection Hearing") on the merits of the Proof of Claim.

PLEASE TAKE FURTHER NOTICE that on November 16, 2010, the Reorganized Debtors filed the (I) Notice Of Adjournment Of Evidentiary Hearing With Respect To Debtors' Objection To Proofs Of Claim Numbers 1294 And 1301 Filed By Ohio Bureau Of Workers' Compensation And (II) Notice Of Sufficiency Hearing With Respect To Debtors' Objection To Proof Of Claim Number 1294 Filed By Ohio Bureau Of Workers' Compensation (Docket No. 20803). The Claims Objection Hearing was scheduled for February 17, 2011, at 10:00 a.m. (prevailing Eastern time) in the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, Room 118, White Plains, New York 10601-4140. On January 31, 2011, the Reorganized Debtors filed the Notice Of Rescheduling Of Sixty-Third Omnibus Hearing And Forty-First Claims Hearing (Docket No. 21101) rescheduling the Claims Objection Hearing date to February 18, 2011.

PLEASE TAKE FURTHER NOTICE that pursuant to paragraph 9(a)(ii) of the Order Pursuant To 11 U.S.C. § 502(b) And Fed. R. Bankr. P. 2002(m), 3007, 7016, 7026, 9006, 9007, And 9014 Establishing (I) Dates For Hearings Regarding Objections To Claims And (II) Certain Notices And Procedures Governing Objections To Claims, entered December 7, 2006 (Docket No. 6089) (the "Claims Objection Procedures Order") and the Fourteenth Supplemental

Order Pursuant To 11 U.S.C. § 502(b) And Fed. R. Bankr. P. 2002(m), 3007, 7016, 7026, 9006, 9007, And 9014 Establishing (I) Dates For Hearings Regarding Objections To Claims And (II) Certain Notices And Procedures Governing Objections To Claims (Docket No. 21098), the Claims Objection Hearing is hereby adjourned to April 21, 2011, at 10:00 a.m. (prevailing Eastern time).

Dated: New York, New York
February 10, 2011

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP

By: /s/ John Wm. Butler, Jr.
John Wm. Butler, Jr.
John K. Lyons
Ron E. Meisler
155 North Wacker Drive
Chicago, Illinois 60606

- and -

Four Times Square
New York, New York 10036

Attorneys for DPH Holdings Corp., et al.,
Reorganized Debtors